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From: BennerAssociates@aol.com

Sent: Thursday, July 08, 2004 10:26 AM

To: Michael Powell; Kathleen Abernathy; Michael Copps; KJMWEB; jadeleste@fcc.gov

Cc: KristyL.LaLonde@omb.eop.gov; Leslie Smith; BennerAssociates@aol.com

Subject: Comment relative to MB Docket No. 04-232

Dear Chairman Powel and Commissioners, Ms. Abernathy and Messrs. Copps, Martin and Adelstein,

On behalf of the American Broadcast Industry I urge you to consider the potential implications of the referenced proposal requiring broadcasters to retain recordings of programming for an unspecified period of time.

The implied purpose for this proposal is to further control the broadcast of alleged indecency. While costs involved with the recording and retention of programming may be significant for many small broadcast operations, there is a far more significant factor to be considered.

In some cases recordings could defend station from frivolous allegations, such recordings, however, would more frequently serve primarily to self-implicate broadcasters as a result of the difficulty defining morality.

Historically, governments and religions attempting to define morality have generally not only failed, but have produced devastating consequences upon humanity simply because "one persons treasured art can be another persons pornography." Clearly, it is impossible to legislate morality.

Today, many broadcasters are extremely fearful of what the Commission will impose next, the escalating legal costs in meeting the increased requirements, potential fines for inadvertent failure to comply and most significantly the extremely high cost of legal assistance for determining what is required to be compliant.

I respectfully, cite two classic recent examples: 1) The grossly over complicated EEO requirements that one broadcaster organization produced a thirty-nine page booklet to define compliance for simply completing a two page form. 2) The similarly over complex political public file requirements. Two examples of initiatives imposed with the best of intentions but which have failed miserably to accomplish their intended objectives.

I suspect we are on a slippery slope attempting to regulate free speech. Today, I am sure you are aware there exists far more fear of the Commission than respect by the broadcast industry. The fault lies not with the Commission but rather the narrow-minded special interest groups pressuring Congress and the Commission for these costly impositions.

Having served all levels of service to broadcasters over the past forty-five years, I assure you of the following readily verifiable determinations: The average request to access to a stations public file is less than once in four years. Rarely, if ever has a proper EEO file adequately protected a station from frivolous employment discrimination allegations.

Indeed, the demands of the few to restrict the rights of the majority have done much in recent times to destroy our constitutional privileges. Further mandating broadcasters to self-incriminate

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by producing recordings as suggested in the referenced proposal is clearly unnecessary and would further intimidate broadcasters and the American Public rights to freedom of speech.

**Respectfully and Sincerely,
Kenneth J. Benner, NCE**

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